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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

GREATER HELLS CANYON COUNCIL and Case No.: 2:17-CV-00843-SU
OREGON WILD,

Plaintiffs,

v.

DISTRICT RANGER KRIS STEIN, in her
official capacity as District Ranger of the
Eagle Cap Ranger District, Wallowa-Whitman
National Forest and the UNITED STATES
FOREST SERVICE, an agency of the United
States Department of Agriculture,

FEDERAL DEFENDANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY IN
SUPPORT OF RESPONSE TO PLAINTIFFS'
MOTION FOR INJUNCTION PENDING
APPEAL

Federal Defendants,

and

WALLOWA COUNTY,

Intervenor-Defendant

Federal Defendants respectfully submit notice to this Court of supplemental authority, *Native Ecosystem Council v. Marten*, No. 17-cv-153-M-DWM, 2018 WL 6046472 (D. Mont. Nov. 19, 2018), related to Plaintiffs' Motion for Injunction Pending Appeal, ECF No. 75. As explained in Federal Defendants' response to that Motion, Plaintiffs incorrectly maintained that *Native Ecosystems Council v. Erickson*, --- F. Supp. 3d ---, No. 17-cv-53-M-DWM, 2018 WL 3649611 (D. Mont. Aug. 1, 2018), and *Center for Biological Diversity v. Ilano*, 261 F. Supp. 3d 1063 (E.D. Cal. 2017), "held that the challenged actions were still subject to NEPA's pre-existing limitations on the use of CEs." ECF No. 88 at 15 (quoting ECF No. 75 at 14). Those cases held no such thing, and "no court has held that the HFRA CE requires review for extraordinary circumstances." *Id.* at 15-16.

On November 19, 2018, the court in *Marten* held that "[c]onsistent with the reasoning provided by the District of Oregon, treatment projects that meet § 6591b's requirements are excluded from 'extraordinary circumstances' review. Thus, the Forest Service was not required to undertake such review and Plaintiffs' challenge on this ground fails." 2018 WL 6046472, at *5 (citing *Greater Hells Canyon Council v. Stein*, 2018 WL 3966289, at *8-9 (D. Or. June 11, 2018), *adopted*, 2018 WL 3964801 (D. Or. Aug. 17, 2018)). This case further supports Federal Defendants' argument that Plaintiffs have not established a likelihood of success (or serious questions going to the merits) as to their claim that the HFRA CE imposed an extra-statutory NEPA requirement on the Forest Service to assess whether extraordinary circumstances existed that would preclude application of the HFRA CE and require preparation of an EA or EIS. See ECF No. 88 at 11-16.

Respectfully submitted on this 20th day of November, 2018.

JEAN E. WILLIAMS
Deputy Assistant Attorney General

Environment and Natural Resources Division

/s/ Shaun M. Pettigrew

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